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**SUBJECT** Appeal Brief (10/006,059)

**Number of Pages** 36

**Date** 10/26/2005

## MESSAGE

This fax communication contains:

1. one copy of a Fax Transmittal Form;
2. two copies of a Fee Transmittal Letter, including fee; and
3. three copies of the Appeal Brief.

Volel

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PTO/SB/21 (02-04)

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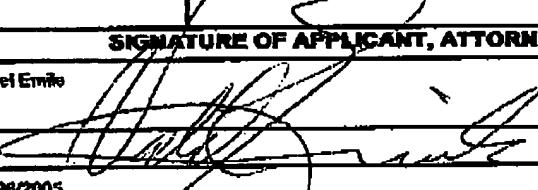
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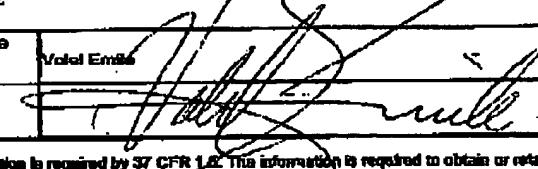
Total Number of Pages in This Submission

Application Number	10/006,059
Filing Date	12/06/2001
First Named Inventor	Dwip N. Banerjee
Art Unit	2151
Examiner Name	Nguyen V. Tran
Attorney Docket Number	1AU5920016871US1

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavit/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below): _____
<input type="checkbox"/> Remarks Appeal Brief.		
		
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
Print or individual name	Volat Emile	
Signature		
Date	10/26/2005	

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Typed or printed name	Volat Emile
Signature	
Date	10/26/2005

This collection of information is required by 37 CFR 1.8. This information is required to obtain or retain a benefit by the public which is to be (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Appl. No. 10/006,059  
Appeal Brief dated 10/26/2005  
Reply to Office Action of 06/07/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of: :  
Banerjee et al. :  
Serial No: 10/006,059 : Before the Examiner:  
Filed: 12/06/2001 : Nghi V. Tran  
Title: APPARATUS AND METHOD : Group Art Unit: 2151  
OF USING XML DOCUMENTS TO : Confirmation No.: 8983  
PERFORM NETWORK PROTOCOL :  
SIMULATION :  
:

TRANSMITTAL OF APPELLANTS' BRIEF UNDER 37 C.F.R. 1.192(a)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attached is Appellant's Brief, in triplicate, from a decision of the Examiner dated 06/07/2005, finally rejecting the claims in the Application.

The item(s) marked below are appropriate:

1.  A petition and fee for extension of term for reply to the final rejection is attached.
2.  Appeal fee  
 other than a small entity. Fee: \$500.00
3.  Payment  
 Please charge Deposit Account 09-0447 the sum of \$500.00. A duplicate of this notice is attached.

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Appl. No. 10/006,059  
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The Commissioner is hereby authorized to charge any additional fee, which may be required or credit any overpayment to Deposit Account No. 09-0447.

Respectfully submitted,

  
Volel Emile  
Attorney for Applicants  
Registration No. 39,969  
(512) 306-7969

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APPELLANTS' BRIEF UNDER 37 C.F.R. 1.192

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is an appeal to a final rejection dated June 07, 2005 of claims 1 - 20 of Application Serial Number 10/006,059 filed on December 06, 2001. This Appeal Brief is submitted pursuant to a Notice of Appeal filed on August 29, 2005 in accordance with 37 C.F.R. 1.192.

10/27/2005 MGEBREM1 00000013 090447 10006059

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Appl. No. 10/006,059  
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(1)

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The real party in interest is International Business Machines Corporation (IBM), the assignee.

(2)

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There are no other appeals or interferences known to appellants, appellants' representative or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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made in the document to perform network protocol simulation  
(see page 27, line 19 to page 28, line 4).

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Issues

Whether Claims 1 - 20 were properly rejected under 35  
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The rejected claims stand or fall together.

(8)

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In considering a Section 102 rejection, all the elements of the claimed invention must be disclosed in a single item of prior art in the form literally defined in the claim. *Jamesbury Corp. v. Litton Indus. Products*, 756 F.2d 1556, 225 USPQ 253 (Fed. Cir. 1985); *Atlas Powder Co. v. Dupont*, 750 F.2d 1569, 224 USPQ 409 (Fed. Cir. 1984); *American Hospital Supply v. Travenol Labs.*, 745 F.2d 1, 223 USPQ 577 (Fed. Cir. 1984).

Lienhard et al. purport to teach an information technology system for the definition, optimization and control of processes. According to Lienhard et al., the disclosure describes an information technology system to control processes consisting of sequences of discrete events, whereby a process model corresponds to a real process or reflects the real process. The process model and the real process are coupled to each other via an AUS920010871US1

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interface. Thus, direct data exchange between the process model and the real process occurs through the interface preferably using XML documents. Although, the process model is coupled to the real process, it can be independent of the real process. This allows the system to perform simulation of process modifications and/or optimization of the process without interruption of the real process. In such a case, process modification in the process model can be checked without interrupting the real process and if the modification was found to be successful, it can be integrated in whole or in part in the real process by way of the interface.

Thus, Lienhard et al. purport to teach process simulation using XML documents which is quite different from performing network protocol simulation using XML documents as claimed in the present Application.

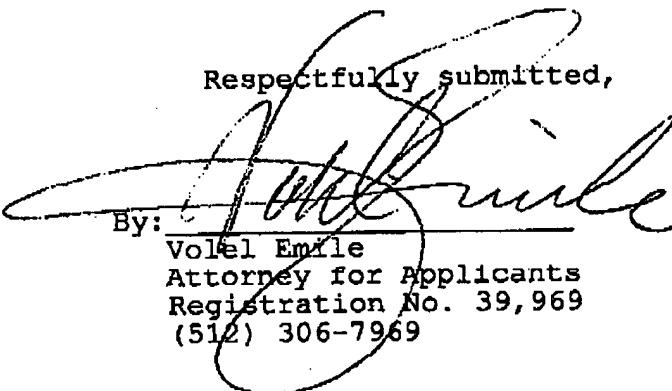
As already explained in the Specification as well as in the Response to the first Office Action, the XML language allows designers to create their own customized tags, enabling definition, transmission, validation, and interpretation of data between applications and between organizations. Thus, if network communications protocol connection establishment between two computer systems on a network, transition state of each user data packet and network communications protocol close connection procedures are known, an XML document may be generated to represent the communications protocol data transactions between the two systems. Varying any element or data in the generated document is in effect modifying the network communications protocol data. Hence the present invention provides an AUS920010871US1

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easy and efficient way of simulating network communications protocol.

In any case, since Lienhard et al. do not teach, show or suggest the steps of changing a part of an XML document that has been generated using network protocol data packets to perform network protocol simulation as claimed, Applicants submit that the claims in the Application are allowable. Hence, Applicants respectfully request allowance and passage to issue of the claims in the application.

Respectfully submitted,

By: 

Volel Emile  
Attorney for Applicants  
Registration No. 39,969  
(512) 306-7969

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## APPENDIX

1. (Previously presented) A method of performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the method comprising the steps of:
  - generating an XML document using network protocol data packets; and
  - changing a part of the XML document to perform the network protocol simulation.
2. (Original) The method of Claim 1 wherein the step of changing a part of the XML document includes the step of changing design characteristics of the network protocol to effect the XML document generation process.
3. (Original) The method of Claim 2 wherein the resultant XML document is used as a simulation aid.
4. (Original) The method of Claim 3 wherein the XML document is validated using a schema.

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5. (Original) The method of Claim 4 wherein new data packets are used to change the XML document.
  
6. (Previously presented) A computer program product on a computer readable medium for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer program product comprising:  
  
code means for generating an XML document using network protocol data packets; and  
  
code means for changing a part of the XML document to perform the network protocol simulation.
  
7. (Original) The computer program product of Claim 6 wherein the code means for changing a part of the XML document includes code means for changing design characteristics of the network protocol to effect the XML document generation process.
  
8. (Original) The computer program product of Claim 7 wherein the resultant XML document is used as a simulation aid.
  
9. (Original) The computer program product of Claim 8 wherein the XML document is validated using a schema.

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10. (Original) The computer program product of Claim 9 wherein new data packets are used to change the XML document.
11. (Previously presented) An apparatus for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the apparatus comprising:
  - means for generating an XML document using network protocol data packets; and
  - means for changing a part of the XML document to perform the network protocol simulation.
12. (Original) The apparatus of Claim 11 wherein the means for changing a part of the XML document includes means for changing design characteristics of the network protocol to effect the XML document generation process.
13. (Original) The apparatus of Claim 12 wherein the resultant XML document is used as a simulation aid.
14. (Original) The apparatus of Claim 13 wherein the XML document is validated using a schema.

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15. (Original) The apparatus of Claim 14 wherein new data packets are used to change the XML document.
16. (Previously presented) A computer system for performing network protocol simulation using an extensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer system comprising:
  - at least one memory device for storing code data; and
  - at least one processor for processing the code data to generate an XML document using network protocol data packets, and to change a part of the XML document to perform the network protocol simulation.
17. (Original) The computer system of Claim 16 wherein the processor further processes the code data to change design characteristics of the network protocol to effect the XML document generation process.
18. (Original) The computer system of Claim 17 wherein the resultant XML document is used as a simulation aid.
19. (Original) The computer system of Claim 18 wherein the XML document is validated using a schema.

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20. (Original) The computer system of Claim 19 wherein new data packets are used to change the XML document.

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made in the document to perform network protocol simulation (see page 27, line 19 to page 28, line 4).

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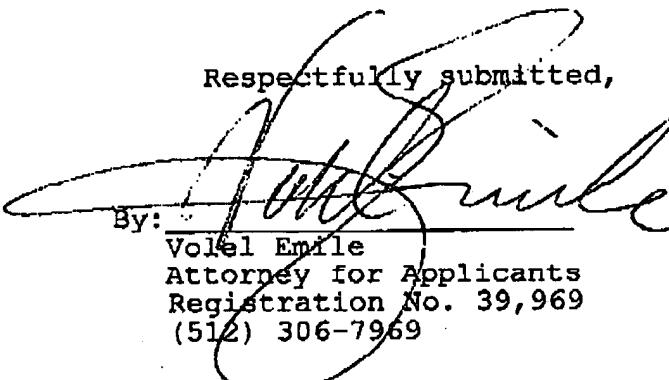
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interface. Thus, direct data exchange between the process model and the real process occurs through the interface preferably using XML documents. Although, the process model is coupled to the real process, it can be independent of the real process. This allows the system to perform simulation of process modifications and/or optimization of the process without interruption of the real process. In such a case, process modification in the process model can be checked without interrupting the real process and if the modification was found to be successful, it can be integrated in whole or in part in the real process by way of the interface.

Thus, Lienhard et al. purport to teach process simulation using XML documents which is quite different from performing network protocol simulation using XML documents as claimed in the present Application.

As already explained in the Specification as well as in the Response to the first Office Action, the XML language allows designers to create their own customized tags, enabling definition, transmission, validation, and interpretation of data between applications and between organizations. Thus, if network communications protocol connection establishment between two computer systems on a network, transition state of each user data packet and network communications protocol close connection procedures are known, an XML document may be generated to represent the communications protocol data transactions between the two systems. Varying any element or data in the generated document is in effect modifying the network communications protocol data. Hence the present invention provides an

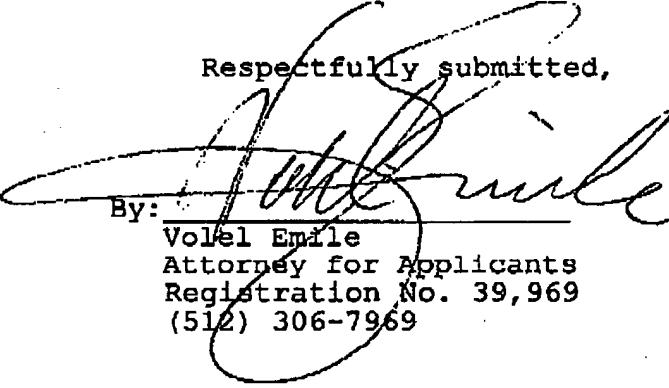
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easy and efficient way of simulating network communications protocol.

In any case, since Lienhard et al. do not teach, show or suggest the steps of changing a part of an XML document that has been generated using network protocol data packets to perform network protocol simulation as claimed, Applicants submit that the claims in the Application are allowable. Hence, Applicants respectfully request allowance and passage to issue of the claims in the application.

Respectfully submitted,

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## APPENDIX

1. (Previously presented) A method of performing network protocol simulation using an extensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the method comprising the steps of:
  - generating an XML document using network protocol data packets; and
  - changing a part of the XML document to perform the network protocol simulation.
2. (Original) The method of Claim 1 wherein the step of changing a part of the XML document includes the step of changing design characteristics of the network protocol to effect the XML document generation process.
3. (Original) The method of Claim 2 wherein the resultant XML document is used as a simulation aid.
4. (Original) The method of Claim 3 wherein the XML document is validated using a schema.

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5. (Original) The method of Claim 4 wherein new data packets are used to change the XML document.
6. (Previously presented) A computer program product on a computer readable medium for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer program product comprising:  
  
code means for generating an XML document using network protocol data packets; and  
  
code means for changing a part of the XML document to perform the network protocol simulation.
7. (Original) The computer program product of Claim 6 wherein the code means for changing a part of the XML document includes code means for changing design characteristics of the network protocol to effect the XML document generation process.
8. (Original) The computer program product of Claim 7 wherein the resultant XML document is used as a simulation aid.
9. (Original) The computer program product of Claim 8 wherein the XML document is validated using a schema.

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10. (Original) The computer program product of Claim 9 wherein new data packets are used to change the XML document.
11. (Previously presented) An apparatus for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the apparatus comprising:  
means for generating an XML document using network protocol data packets; and  
means for changing a part of the XML document to perform the network protocol simulation.
12. (Original) The apparatus of Claim 11 wherein the means for changing a part of the XML document includes means for changing design characteristics of the network protocol to effect the XML document generation process.
13. (Original) The apparatus of Claim 12 wherein the resultant XML document is used as a simulation aid.
14. (Original) The apparatus of Claim 13 wherein the XML document is validated using a schema.

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15. (Original) The apparatus of Claim 14 wherein new data packets are used to change the XML document.
16. (Previously presented) A computer system for performing network protocol simulation using an eXtensible Markup Language (XML) document, the XML document representing network communication exchanges, the network protocol simulation including changes made in the XML document to effect changes in the network communication exchanges, the computer system comprising:  
at least one memory device for storing code data; and  
at least one processor for processing the code data to generate an XML document using network protocol data packets, and to change a part of the XML document to perform the network protocol simulation.
17. (Original) The computer system of Claim 16 wherein the processor further processes the code data to change design characteristics of the network protocol to effect the XML document generation process.
18. (Original) The computer system of Claim 17 wherein the resultant XML document is used as a simulation aid.
19. (Original) The computer system of Claim 18 wherein the XML document is validated using a schema.

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20. (Original) The computer system of Claim 19 wherein new data packets are used to change the XML document.

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